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DEC - 8 2006

NATIONAL FUTURES ASSOCIATION
LEGAL DOCKETING

NATIONAL FUTURES ASSOCIATION
BEFORE THE
BUSINESS CONDUCT COMMITTEE

In the Matter of:	)	
	)	
GAIN CAPITAL GROUP LLC (NFA ID #339826),	)	NFA Case No. 06-BCC-037
	)	
	)	
Respondent.	)	

COMPLAINT

Having reviewed the investigative report submitted by the Compliance Department of National Futures Association ("NFA"), and having found reason to believe that NFA Requirements are being, have been or are about to be violated and that the matter should be adjudicated, NFA's Business Conduct Committee ("Committee") issues this Complaint against Gain Capital Group LLC ("GCG").

ALLEGATIONS

JURISDICTION

1. At all times relevant to this Complaint, GCG was a futures commission merchant ("FCM") Forex Dealer Member ("FDM") of NFA located in Bedminster, New Jersey. GCG's principal business is retail forex.

BACKGROUND

2. GCG registered as an FCM and NFA Member in July 2004, but initially did not do any forex business. GCG was essentially a "shell" FCM that had registered

principally so that its non-NFA Member affiliate, Gain Capital, Inc. ("GCI"), could act as a counterparty to forex transactions based on its affiliation with GCG.

3. In April 2006, as part of a routine inquiry of GCG's internet advertising, NFA learned that GCG was conducting forex business. (GCG had approximately 16,000 forex accounts and made over $50 million in gross revenue in the first nine months of 2006.)

4. Upon learning that GCG was conducting business, NFA commenced an examination of the firm to determine if it was in compliance with NFA Rules.

5. NFA's examination found numerous and serious deficiencies with GCG's promotional material and that of its unregistered sales solicitors. In addition, NFA's examination found that GCG had failed to develop and implement an adequate anti-money laundering ("AML") program.

APPLICABLE RULES

6. NFA Compliance Rule 2-36(b)(1) provides that no FDM or Associate of an FDM engaging in any foreign currency futures or options transaction shall cheat, defraud or deceive, or attempt to cheat, defraud or deceive any other person.

7. NFA Compliance Rule 2-36(c) provides that FDMs and their Associates shall observe high standards of commercial honor and just and equitable principles of trade in the conduct of their foreign currency futures and options business.

8. NFA Compliance Rule 2-36(d) provides that an FDM that is a counterparty to retail customers' forex transactions shall be subject to discipline for the activities of any person that solicits or introduces a customer to the Member, unless such person is an NFA Member or Associate.

9. NFA Compliance Rule 2-9(c) requires, in pertinent part, that all FCM Members develop and implement a written anti-money laundering ("AML") program.

10. NFA Compliance Rule 2-11 provides that no Member FCM, unless a member of a contract market, shall carry customer accounts without prior notice to NFA.

COUNT I

VIOLATION OF NFA COMPLIANCE RULES 2-36(b)(1) AND 2-36(c): USING DEFICIENT PROMOTIONAL MATERIAL AND FAILING TO UPHOLD HIGH STANDARDS OF COMMERCIAL HONOR AND JUST AND EQUITABLE PRINCIPLES OF TRADE.

11. The allegations contained in paragraphs 1 through 8 are realleged as paragraph 11.

12. At the time of NFA's 2006 examination, GCG solicited customers through a variety of forms of promotional material, including websites, Internet chat rooms, Internet banner advertisements, and e-mails. These promotional materials contained the following claims:

- "All customer funds are strictly segregated from Forex.com's operating funds in separate bank accounts."
- "We have segregated accounts which are insured up to $100,000 by the FDIC."
- "Your funds will be protected in the unlikely case of bankruptcy."
- "...you can select to have the funds wired to a segregated FDIC insured account to give you peace of mind."
- "...if you are worried and want your money to be insured by the FDIC you can open a segregated account with a minimum of $25k."
- "Forex.com charges no commissions or fees regardless of account balance or trading activity."

- "Forex.com charges no commissions or fees whatsoever."
- "Gain Capital charges no commissions or fees regardless of account balance or trading activity."
- "Forex.com offers commission free trading across the board – regardless of account type, balance or trading activity."
- "No slippage on market orders"
- "...we guarantee your fill at the market price you see. There is no slippage as compared to other companies."

13. The Interpretive Notice to NFA Compliance Rule 2-36 ("Interpretive Notice") states that no Member may represent that forex funds deposited with an FDM are given special protection under the bankruptcy laws. Therefore, the above claims of GCG that customer funds are segregated and protected in case of bankruptcy were misleading.

14. The Interpretive Notice also states that a Member may not represent that its services are commission free without an accompanying and proximate disclosure of how the firm is compensated. Therefore, the above claims of GCG touting commission free trading were misleading as they were not accompanied by a disclosure of how GCG is compensated.

15. GCG's claims regarding "no slippage" were also misleading, as slippage can and does occur under volatile market conditions. Moreover, GCG's customers occasionally experience a "rate change," which occurs when GCG updates prices on its trading platform at the same time that a customer enters an order. In these instances, the price originally quoted to the customer is not the price that the customer actually receives.

16. Subsequent to audit fieldwork, NFA staff met with GCG personnel to discuss the promotional material deficiencies noted in the audit. Soon thereafter, the firm corrected these deficiencies. Just a short time later, however, GCG renewed the use of Internet banner advertisements that touted GCG's commission free trading and the advantages of 200 to 1 leverage. These banner ads were misleading in that they failed to disclose how GCG is compensated or the risk of loss associated with leverage.

17. In addition to the Internet banner ads, GCG also advertised "commission free" trading on a display banner at the Forex Expo convention held in September 2006. As with GCG's other advertising, there was no accompanying disclosure on the display banner as to the manner in which GCG is compensated. Therefore, the display banner was misleading.

18. At the time of NFA's examination, GCG had approximately 170 domestic and foreign unregistered sales solicitors. NFA reviewed the websites of several of GCG's domestic solicitors and found a number of misleading claims on these websites, including claims of commission free trading without an accompanying disclosure of how the firm is compensated; a claim that "all customer funds are strictly segregated from Gain's own operating funds in separate bank accounts," thereby suggesting that customer funds are given special protection; and a claim of "No Slippage on Market Orders."

19. In addition, NFA found that several of GCG's domestic solicitors' websites included misleading claims that inflated the profit potential and downplayed the risk of loss of trading forex, e.g., "the substantial leverage available in Forex can

be a powerful, profitable tool if used with the right strategy," "no counterparty risk in Forex Transactions," "you have nothing to lose and everything to gain," "just by taking the automated trading signals generated by FXsignal4 over the past 12 months you would have seen a staggering 637.8% return on your money," and "for everyone trading with the program with only $10,000 in their account by the end of the year they generated $63,780 in total profits!"

20. GCG's supervisory procedures for its sales solicitors required GCG to review a solicitor's website at the time GCG enters into a business relationship with the solicitor, and thereafter on an annual basis. However, contrary to its procedures, GCG failed to conduct any review of its solicitors' websites and, therefore, failed to detect, let alone take any action to correct, the promotional material deficiencies in its solicitors' websites, including those cited above.

21. By reason of the foregoing acts and omissions, GCG is charged with violations of NFA Compliance Rules 2-36(b)(1) and 2-36(c). Pursuant to NFA Compliance Rule 2-36(d), GCG is also subject to discipline for the misleading promotional material, cited above, of its non-Member solicitors.

COUNT II

VIOLATION OF NFA COMPLIANCE RULE 2-9(c): FAILING TO ESTABLISH AND IMPLEMENT AN ADEQUATE ANTI-MONEY LAUNDERING PROGRAM.

22. The allegations contained in paragraphs 1 through 5 and 9 are realleged as paragraph 22.

23. As a registered FCM, GCG was required to develop an AML program that met the requirements of NFA Compliance Rule 2-9(c).

24. GCG's AML program failed to conform to many of the requirements of NFA Compliance Rule 2-9(c) including those relating to customer identification, suspicious activity reporting, and responsibilities of the firm's AML Compliance Officer. GCG also failed to conduct an annual audit of its AML program and failed to maintain support showing that it had conducted AML training.

25. By reason of the foregoing acts and omissions, GCG is charged with violations of NFA Compliance Rule 2-9(c).

COUNT III

VIOLATION OF NFA COMPLIANCE RULES 2-11 AND 2-36(c): FAILURE TO NOTIFY NFA THAT GCG WAS CARRYING CUSTOMER ACCOUNTS.

26. The allegations contained in paragraphs 1 through 5 and 10 are realleged as paragraph 26.

27. GCG became a registered FCM and NFA Member in July 2004 and began acting as the counterparty to retail forex transactions in February 2006. However, GCG failed to notify NFA that it was planning to carry customer accounts, and NFA only learned of this when it made a routine inquiry concerning the firm's internet advertising.

28. By reason of the foregoing acts and omissions, GCG is charged with violations of NFA Compliance Rules 2-11 and 2-36(c).

PROCEDURAL REQUIREMENTS

ANSWER

You must file a written Answer to the Complaint with NFA within thirty

days of the date of the Complaint. The Answer shall respond to each allegation in the Complaint by admitting, denying or averring that you lack sufficient knowledge or information to admit or deny the allegation. An averment of insufficient knowledge or information may only be made after a diligent effort has been made to ascertain the relevant facts and shall be deemed to be a denial of the pertinent allegation.

The place for filing an Answer shall be:

National Futures Association
200 West Madison Street
Suite 1600
Chicago, Illinois 60606-3447
Attn: Legal Department-Docketing

Failure to file an Answer as provided above shall be deemed an admission of the facts and legal conclusions contained in the Complaint. Failure to respond to any allegation shall be deemed an admission of that allegation. Failure to file an Answer as provided above shall be deemed a waiver of hearing.

POTENTIAL PENALTIES, DISQUALIFICATION AND INELIGIBILITY

At the conclusion of the proceedings conducted as a result of or in connection with the issuance of this Complaint, NFA may impose one or more of the following penalties:

(a) expulsion or suspension for a specified period from NFA membership;

(b) bar or suspension for a specified period from association with an NFA Member;

(c) censure or reprimand;

(d) a monetary fine not to exceed $250,000 for each violation found; and

(e) order to cease and desist or any other fitting penalty or remedial action not inconsistent with these penalties.

The allegations in this Complaint may constitute a statutory disqualification from registration under Section 8a(3)(M) of the Commodity Exchange Act. Respondents in this matter who apply for registration in any new capacity, including as an associated person with a new sponsor, may be denied registration based on the pendency of this proceeding.

Pursuant to the provisions of CFTC Regulation 1.63 penalties imposed in connection with this Complaint may temporarily or permanently render Respondents who are individuals ineligible to serve on disciplinary committees, arbitration panels and governing boards of a self-regulatory organization, as that term is defined in CFTC Regulation 1.63.

NATIONAL FUTURES ASSOCIATION
BUSINESS CONDUCT COMMITTEE

Dated: 12-8-06

By: _____
Chairperson

/jac(Complaint\Gain 2006)

AFFIDAVIT OF SERVICE

I, Myra Lewis, on oath state that on December 8, 2006, I served a copy of the attached Complaint, by sending such copy in the United States mail, first-class delivery, and by overnight mail, in envelopes addressed as follows:

Gain Capital Group LLC
550 Hills Drive
Suite 210
Bedminster, NJ 07921
Attn: Alex Bobinski, CFO

Myra Lewis

Myra Lewis

Subscribed and sworn to before me
on this 8th day of December 2006.

Mary A. Patton

Notary Public

OFFICIAL SEAL
Mary A. Patton
Notary Public, State of Illinois
MY COMMISSION EXPIRES 7-17-09